

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Curves International, Inc.,

Plaintiff,

vs.

Linda S. Mosbarger,

Defendant

Case Action No. 2007-CV-807-MHT

**MICHAEL GRAY, KEVIN AYERS,
AND JULIE FERRELL'S MOTION
FOR SANCTIONS UNDER RULE 11**

Michael Gray, Kevin Ayers, and Julie Ferrell move this Court for an Order pursuant to Rule 11 of the Federal Rules of Civil Procedure imposing sanctions on Linda Mosbarger and her counsel for bringing Mosbarger's Amended Answer-Counterclaim against them. Mosbarger has attempted to bring a "counterclaim" against three individuals who are not parties to this action. Mosbarger has not sought leave of court to add additional parties to this case, but has instead merely attempted to unilaterally add those parties by including them as part of an improperly designated "counterclaim." Mosbarger then attempted to serve that pleading by sending copies of it via certified mail to Michael Gray. Service of an initial pleading via certified mail is not proper under the Federal Rules of Civil Procedure. Nor was service proper upon Michael Gray, who was not authorized to accept service on behalf of Kevin Ayers or Julie Ferrell.

Even had Mosbarger properly added Gray, Ferrell, and Ayers as parties to this action, the claim she asserts against them is not warranted by existing law or by a nonfrivolous argument for the extension of existing law. To the contrary, Mosbarger presented her claim for an improper purpose, namely to harass the named individuals and increase the cost of this litigation. As such Mosbarger and her counsel have violated Rule 11(b) and are subject to sanctions.

Mosbarger's Amended Answer-Counterclaim brings a single claim for criminal trespass against those individuals. Mosbarger lacks standing to bring a claim based on the violation of a criminal statute. Moreover, the conduct upon which Mosbarger relies in her Amended Answer-Counterclaim to establish a criminal trespass does not even arguably constitute a violation of law. Mosbarger does not even allege that Kevin Ayers ever visited the property at which she alleges a criminal trespass occurred, a necessary element of that offense. Moreover, Mosbarger's Amended Answer-Counterclaim denies that Mosbarger has the right of possession of the property or is otherwise authorized to order any person to leave it. Without an allegation that Gray, Ferrell, or Ayers remained on the premises at issue after receiving a lawful order to leave, Mosbarger's Amended Answer-Counterclaim cannot possibly state a viable claim for criminal trespass. Most significantly, the conduct that Mosbarger describes represents no more than a factual investigation performed by Julie Ferrell and Michael Gray during normal business hours, when the facility was open to the public. Mosbarger does not allege that the facility was closed to the public, that she had authority to demand that Ferrell or Gray leave that facility, or that Ferrell or Gray disobeyed such a demand.

Michael Gray advised Mosbarger's counsel of the significant shortcomings in the Amended Answer-Counterclaim by letter dated December 11, 2007. That letter informed Mosbarger's counsel that the Amended Answer-Counterclaim was procedurally deficient, was served improperly, and failed to state a cognizable claim for relief against the named individuals. The December 11 letter then advised Mosbarger's counsel that Gray, Ferrell, and Ayers would bring a motion for sanctions pursuant to Rule 11 unless Mosbarger's counsel dismissed the Counterclaim against the individuals. Mosbarger and her counsel have refused to do so.

Mosbarger's refusal to voluntarily withdraw this baseless pleading entitles Gray, Ferrell, and Ayers to an award of sanctions against Mosbarger and her counsel, as set forth in Rule 11.

This Motion is based on the accompanying Memorandum of Law, the affidavit of Michael Gray, the Memorandum of Law in Support of Gray, Ferrell, and Ayers' Motion to Dismiss, and all the files and proceedings herein.

Dated: December 21, 2007

**GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.**

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